Supreme Court, U.S.
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IN THE

Supreme Court of the United States

GLOBAL AEROSPACE, INC.,

Petitioner,

v.

THERESA JACKSON WOOD,
as Personal Representative of CLEDA F. BROWN, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
ARIZONA COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a judgment that precludes a liability insurer from raising dispositive defenses to the individual indemnification claims of more than 1,600 toxic tort plaintiffs violates Fourteenth Amendment due process guarantees when:

a. the courts below invoked offensive collateral estoppel to resolve key coverage issues against the insurer without any adversary process based on inferences drawn from a $35 million settlement agreement and consent judgment negotiated exclusively between the tort plaintiffs and the insurer's policyholders in the underlying tort action;

b. the settlement agreement and consent judgment did not purport to resolve or adjudicate any issues of fact or law;

c. the tort plaintiffs completely released the policyholders from any payment obligation in exchange for an assignment of the policyholders' rights under the insurance policies; and

d. the insurer was affirmatively barred from participating and protecting its interests in the underlying tort action that gave rise to the estoppel.

LIST OF PARTIES

Pursuant to Rule 14.1(b) and Rule 29.6, the following list identifies all of the parties to the appellate proceeding in the Arizona Court of Appeals, whose judgment is sought to be reviewed:

Petitioner Global Aerospace, Inc., formerly known as Associated Aviation Underwriters, Inc. (managing successor to Associated Aviation Underwriters, an unincorporated association) is a wholly owned subsidiary of Global Aerospace USA, Inc., which in turn is wholly owned by Global Aerospace Underwriting Managers Ltd. The following three companies own 10% or more of the shares of Global Aerospace Underwriting Managers Ltd.: Northern States Agency, Inc., Converium AG, and Munich Re.

Respondents Theresa Jackson Wood, as Personal Representative of Cleda F. Brown, *et al.*, are more than 1,600 individually named plaintiffs-intervenors in the proceedings below. The names of the individual Respondents, drawn from the list of intervenors appended to the Judgment (Apr. 12, 1991) in *Gerardo v. City of Tucson*, No. 247622 (Ariz. Superior Ct., Pima County), are set forth in Appendix F (135a to 154a).

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Petitioner Global Aerospace, Inc., formerly known as Associated Aviation Underwriters, Inc. (managing successor to Associated Aviation Underwriters, an unincorporated association) (hereinafter, "AAU") respectfully petitions for a writ of certiorari to review the judgment of the Arizona Court of Appeals in *Associated Aviation Underwriters v. Wood*, 98 P.3d 572 (Ariz. Ct. App. 2004), *review denied mem.*, No. CV-04-0382-PR, 2005 Ariz. LEXIS 46 (Ariz. Apr. 19, 2005).

OPINIONS BELOW

The opinion of the Arizona Court of Appeals is dated September 29, 2004 and reported at 98 P.3d 572 (Ariz. Ct. App. 2004) (App. 1a-110a), *review denied* (Ariz. Apr. 19, 2005) (App. 116a). The relevant portions of the trial court's order dated September 29, 2000 are summarized in an unreported minute entry (App. 111a-112a) that subsequently was memorialized in a filing by intervenors (Respondents here) (App. 113a-115a).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). On April 19, 2005, the Arizona Supreme Court denied discretionary review of the Court of Appeals decision that is the subject of this petition. On June 27, 2005, Justice O'Connor granted Petitioner's application for a 30-day extension of time to and including August 17, 2005 to file a petition for certiorari. *See* Application No. 04-A1077. This petition is timely filed pursuant to Supreme Court Rules 13.1 and 13.5.

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment of the United States Constitution provides, in pertinent part, "nor shall any state deprive any person of . . . life, liberty, or property, without due process of law. . . ." U.S. Const. amend. XIV, § 1.

INTRODUCTION AND SUMMARY OF REASONS FOR GRANTING THE PETITION

This case raises an important, recurring question relating to the unprincipled imposition of offensive collateral estoppel against liability insurers. Relying on settlement agreements entered into between tort plaintiffs and defendants, and in the absence of any claim that the defendants' liability insurers